



S.A.No.338 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	13.10.2025
<i>Pronounced on</i>	18.12.2025

Coram:

The Honourable Mrs.Justice K.GOVINDARAJAN THILAKAVADI

Second Appeal No.338 of 2023

1.K.B.Nanjan
K.B.Joghee (since deceased)
2.Saraswathy
3.K.B.Mani
4.K.B.Kannan
5.K.B.Rajan
6.Saraswathi
7.K.J.Rajan
8.K.J.Seetha
9.K.J.Devagi
10.K.J.Indira
11.K.J.Chinna

... Appellants

versus

Ponnammal @ Ponnu

... Respondent

Prayer: Second Appeal is filed under Section 100 C.P.C, praying to set aside the judgment and decree dated 03.11.2022 made in A.S.No.7 of 2018 on the



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file of District Judge at the Nilgiris, Udhagamandalam, confirming the judgment and decree dated 19.01.2018 made in O.S.No. 37 of 2017 on the file of the Subordinate Judge, Coonoor, Nilgiris.

For Appellants : Mr.T.R.Sathiya Mohan

For Respondent : Mr.P.K.Harinath Babu

JUDGMENT

The above second appeal arises out of the judgment and decree dated 03.11.2022 made in A.S.No.7 of 2018 on the file of District Judge at the Nilgiris, Udhagamandalam, confirming the judgment and decree dated 19.01.2018 made in O.S.No. 37 of 2017 on the file of the Subordinate Judge, Coonoor, Nilgiris.

2.The respondent is the plaintiff, who filed the above suit for the relief of permanent injunction restraining the defendants from interfering with the peaceful possession and enjoyment of the plaintiff in the suit property.



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3. According to the plaintiff, the suit property originally belonged to the husband of the plaintiff by virtue of an oral partition that took place between his family members in the year 1992 and thereafter, he executed the registered settlement deed in favour of the plaintiff on 12.06.2007 and from then onwards the plaintiff alone was in actual physical possession and enjoyment of the suit property without any interference. The revenue records also stands in the name of the plaintiff. While so, during the 1st week of June 2013 the defendants and his brother K.B.Nanjan attempted to disturb the possession of the plaintiff in the suit property. Hence, the plaintiff issued a legal notice on 12.06.2013 to the defendant, but the defendant failed to reply to the said notice. On 24.03.2014, the defendants came to the suit property, threatened the plaintiff with dire consequence and also threatened to take forcible possession of the suit property which made the plaintiff lodge a complaint against the defendant. Hence, on the advice of the police, the plaintiff filed the above suit along with an interim application seeking for an order of ad interim injunction against the 1st defendant in which an *ex parte* interim injunction was granted on 25.02.2015. The claim of the plaintiff was



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resisted by the defendant stating that the suit property was originally allotted to the plaintiff's father-in-law, late Meena Bellan, during his lifetime through an oral partition between him and his son and he was alone in possession and enjoyment of the said property till his demise on 24.10.1991. It is further stated that the suit property originally belongs to one Smt.Masiammal, wife of Bada Bellan and Mathiyammal, Wife of Pila Nanjan, under registered documents. The said Mathiyammal executed a Will in favour of one K.B.Bhojan son of Meena Bellan, as per the oral partition the said Meena Bellan was in possession of the suit property till his life time. After his demise, his sons agreed to allot the suit property to their sister Lakshmi wife of Halan. The said Lakshmi was in possession and enjoyment of the suit property till 2000. Thereafter, the suit property was kept as common property by the legal heirs of Meena Bellan. The suit property was never allotted to the plaintiff's husband in the oral partition which took place in the year 1992. Hence, he had no right to execute the settlement deed in favour of his wife and mere registration of the gift deed do not confer any valid title on the plaintiff. Even otherwise, the settlement deed was not acted upon and the



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same is not binding on the defendants. The plaintiff is not in possession and enjoyment of the suit property. Moreover, the defendants' brother K.B.Bojan is a necessary party in the suit. Therefore, the suit is bad for non-joinder of necessary party. Hence, prayed for dismissal of the suit.

4.The Trial Court upon considering the materials on record, decreed the suit in favour of the plaintiff against which the defendants preferred the appeal suit in A.S.No.7 of 2018 before the District Judge, Nilgiris, Udagamandalam. The first Appellate Court dismissed the appeal suit confirming the judgment and decree passed by the trial Court. Aggrieved by this Court, the present second appeal is preferred by the unsuccessful defendants.

5.At the time of admission, the following substantial questions of law is formulated:

(i)Whether the Hon'ble Trial Court was right in holding that the burden of proving the allotment of Suit Schedule property is on the Appellants/Defendants herein?

(ii) Whether the Hon'ble Lower Appellate Court



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was right in completely ignoring or omitting consider Ex. B3?

(iii) Whether the Hon'ble Trial Court was right in holding that the Registered Will was not proved merely because the witnesses who were examined in the suit proceedings stated that they had no knowledge about what is written in the Will?

(iv) Whether, after specifically holding that "Even though law is settled when a suit for bare injunction is filed, if the other side has disputed about title of the property, generally, the plaintiff, who filed the suit, has to seek a relief of declaration with regard to title in the suit itself wherein the title is in cloud condition" the Hon'ble Lower Appellate Court was right in failing to reject the relief claimed by the Plaintiff and proceeding to hold that issue is not required to decide bare injunction suit?"

6.The learned counsel appearing for the appellants/defendants would submit that Mathiayammal and her daughter Maasiammal were jointly owners of various extents of lands purchased by them under sale deed dated 28.08.1964 and subsequently, they partitioned the same in which the said



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Mathiyammal was allotted lands to an extent of 0.25 acres in S.No.538/7 and 0.04 acres in S.No.695/1 extents of lands. The said Mathiyammal was allotted other properties. The extent of 0.29 acres of land described as 'Suit properties' were originally owned and possessed by Mathiyammal and as such the father-in-law of the plaintiff namely Meena Bellan was not the owner of the said extent of 0.29 acres. An extent of 0.21 acres of land in S.No.538/7 and 0.04 acres in S.No.695/1 was allotted to Masiammal, daughter of Mathiyammal and Nanjan in the oral partition between herself and her mother, Mathiyammal. The said extent of 0.21 acres was not settled in favour of Meena Bellan, the father-in-law of the plaintiff and that this extent of property remained as common even today and the same was not subject to partition in the year 1992. The husband of the plaintiff namely, K.B.Dhonan and the 1st defendant are brothers and other defendants are the sons and daughters of the other two brothers namely, K.B.Bhojan and K.B.Joghee and that in the partition that took place among the brothers in the years 1992, the extent of 0.21 acres in the suit property was kept in common and was not subjected to partition. The oral partition was done only in



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respect of various other ancestral properties belonging to Meena Bellan, in which the suit property was not included. The said Mathiyammal executed a Will on 30.12.1994 bequeathing the property measuring 0.25 acres in S.No.538/7 and 0.04 acres in S.No.695/1 to K.B.Bhojan and aggrieved by this the present suit has been filed. Hence, it is submitted that the said K.B.Dhonan himself had no right over the suit property and therefore he is not entitled to execute the settlement deeds dated 05.11.2004 and 12.06.2007 in favour of his wife namely the plaintiff herein. His further submission is that in spite of proof of Will in accordance with law, the Courts below failed to consider the same. It is further submitted that since the plaintiff is not the lawful owner of the suit property, no injunction could be granted in favour of the plaintiff.

7.It is further contended that the First Appellate Court erred in holding that in a suit for bare injunction, the question of declaration does not arise, which is against the well established legal principles that when there is a cloud over the title of the property, the person claiming any right in the disputed property ought to have sought for the relief of declaration of title.



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The further submission of the learned counsel is that the documents relied upon by the plaintiff has no relevance and the same will not entitle her to claim the relief of injunction and that the Courts below have not properly appreciated the document marked as Ex.A10 and erred in holding that the suit property was already partitioned. It is further contended that when the plaintiff approached the Court for permanent injunction, claiming to be owner of the property in question, it was her duty to prove that she is the owner of the property which remained in her possession and defendant had no right, title or interest therein. In the present case, the plaintiff failed to prove her ownership in the suit property and therefore, the suit is liable to be dismissed. To support his contention he has relied upon the judgment in the case of ***Yamuna Nagar Improvement Trust Vs. Khariati lal*** reported in ***(2005) 10 SCC 30***.

8.On the other hand the learned counsel appearing for the respondents would submit that the suit property was allotted to the husband of the plaintiff in the oral partition that took place in the year 1992 between himself and his family members and thereafter he executed two settlement deeds in



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favour of his wife, namely the plaintiff and from then onwards the plaintiff alone in possession and enjoyment of the suit property; the defendant have no right whatsoever to disturb the possession and enjoyment of the plaintiff over the suit property. Since the defendants were disturbing her possession and enjoyment in the suit properties, she was constrained to file the above suit for the relief of permanent injunction. The Courts below having considered the oral and documentary evidences let in by the plaintiff, decreed the suit in favour of the plaintiff which warrants no interference by this Court. The learned counsel further submits that in a suit for permanent injunction, when there is no dispute as to title, there is no need to seek the relief of declaration of title. To support his contention, he has relied upon the following judgment in the case ***A.Subramanian and Another Vs. R.Panner Selvam*** reported in ***(2021) 3 SCC 675***

9.Heard on both sides, records perused.

10.It is a suit for bare injunction filed by the plaintiff. According to the plaintiff, the suit property was allotted to her husband in an oral partition that took place in the year 1992. Though the defendants admit the oral



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partition, they deny that the suit property was allotted to the husband of the plaintiff. The Plaintiff has relied upon Ex.A10 'Certified Copy of plaint' in O.S.No.54 of 2010 filed before the District Munsif Court, Coonoor, against one of the defendants herein namely, K.B.Nanjan, in which, in paragraph 6 of the plaint, it is mentioned as follows:

6. The plaintiff further more begs to state that when the matter stands as such, the plaintiff being in possession and enjoyment of the suit properties, her brother -in-law, the defendant herein having jealous over the plaintiff and the improvements made in the suit schedule properties by the plaintiff having covetous eyes, have all of sudden come to the suit property during the first week of June 2013 along with his brother Mr.K.B.Nanjan started disturbing the possession of the suit schedule properties by the plaintiff. The plaintiff immediately caused a legal notice dated 12.06.2013 not to disturb the peaceful possession and enjoyment of the suit schedule properties. The defendant having received and acknowledged the legal notice without demur, has not come forward to reply till date."



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11.The Plaintiff submits that in the year 1992, an oral partition arrangement was made among the surviving legal heirs of Late Meena Bellan, under the terms of which, all other properties were divided between his sons. The plaintiff is relying upon the said documents to infer that the suit property was already partitioned and was allotted to the plaintiff's husband. Whereas the contention of the defendant's is that, there is no specific mentioning about allotting the suit property in favour of plaintiff's husband K.B.Dhonan. The defendants further relied upon a Will said to have been executed by Mathiyammal in favour of K.B.Bhojan, son of Meena Bellan with regard to the suit property. As rightly been pointed out by the trial Court, the said Will was not tested in accordance with law. In fact, the witnesses examined on the side of the Defendants have not spoken about the execution of the said Will and had also stated that the defendants are not in possession and enjoyment of the suit property. This aspect was not clarified by the defendants by re-examining the said witnesses. Moreover the Defendants have not replied to the legal notice issued by the Plaintiff under



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Ex. A15, for which there was no valid explanation offered by the defendants.

Hence, adverse inference has to be drawn against the Defendants.

12.If really the defendants have any right over the suit property, they would have sent a reply notice to the Plaintiff or would have taken appropriate steps to prove their possession and entitlement over the suit property. Where as, the Plaintiff, to establish her possession over the suit property, has filed the revenue records, marked as Exs.A3 to A7, which stood in the name of the Plaintiff.

13.On the other hand the Defendants failed to establish their possession and enjoyment over the suit property. In fact the Defendants have not even raised any objections with regard to transfer of patta, chitta in the name of the Plaintiff. Moreover, the Plaintiff has filed Exs.A.6 & A7 tax receipts to prove the payment of revenue taxes for the suit property.

14.The Courts below have given cogent reasons for holding that the suit filed by the plaintiff for injunction is maintainable without entering into the title of the plaintiff in facts and circumstances of the present case. Furthermore, Ex.B.3 Will was rejected by the Courts below for the reason



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that the same was not proved in accordance with law. There is no perversity or infirmity found in the findings of Courts below. Hence, the submissions by the learned counsel for the appellants/defendants, that Ex.B3 Will, was not looked into is incorrect. The Courts below have well considered the oral and documentary evidences filed on either side which is clear from the discussions made by the Courts below. There is no error in the views taken by the Courts below and the suit for injunction filed by the plaintiff deserves to be decreed on basis of the admitted and established possession of the plaintiff, which warrants no interference by this Court.

15.In the result,

(i) this second appeal is dismissed. No costs.

(ii) the judgment and decree dated 03.11.2022 made in A.S.No.7 of 2018 on the file of District Judge at the Nilgiris, Udthagamandalam, confirming the judgment and decree dated 19.01.2018 made in O.S.No. 37 of 2017 on the file of the Subordinate Judge, Coonoor, Niligiris is upheld.



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vsn

Index: Yes/No

Speaking order / Non-speaking order

To

1. The District Judges at the Nilgiris, Udthagamandalam
2. The Subordinate Judge, Coonoor, Niligiris.
3. The Section Officer, VR Section, High Court, Madras.

K.GOVINDARAJAN THILAKAVADI, J.

vsn



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**Pre-delivery judgment made in
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